

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

LINDA WATTERS, Commissioner,
Offices of Financial and Insurance Services,
for the State of Michigan,

Plaintiff,
v.

Case #: 03-1127 CR
Hon. William Collette

THE WELLNESS PLAN,

Defendants.

THE KEANE LAW FIRM

By: Christopher J. Keane (P 46920)
Attorney for Jalyn McCoy, a minor, by NF Regina McCoy
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ZAUSMER, KAUFMAN, AUGUST & CALDWELL, P.C.

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(248) 851-4111

GRIER & COPELAND, P.C.

By: Wilson A. Copeland (P 23837)
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**BRIEF IN SUPPORT OF PRIORITY OF CLAIMANT, JALYN MCCOY,
VERSUS PHYSICIANS CLAIMING BILLS FOR MEDICAL SERVICES and
PROOF OF SERVICE**

Jalyn McCoy, who is claiming bodily injury from a loss, is a Class 2 claimant as he is a third party claiming a loss pursuant to MCL 500.8142(1)(b), or, in the alternative, is a Class 4 claimant for bodily injury pursuant to MCL 500.8142(1)(d).


The physicians, who are ostensibly claiming money for services rendered by them as physicians to members of The Wellness Plan, are general creditors and, therefore, are Class 5 claimants pursuant to MCL 500.8142(1)(e).

In addition, those physicians who are claiming money for services rendered who are actual employees but not officers or directors of The Wellness Plan, would be Class 4 claimants with Jalyn McCoy. They would have a lesser priority than Jalyn McCoy if he were a Class 2 claimant or, if Jalyn were designated a Class 4 claimant the same priority as Jalyn McCoy, but would be limited to \$1,000.00 pursuant to the statute.

No physicians – employees or independent contractors – are entitled to a higher priority than Jalyn McCoy. First, some physicians are not employees but were independent contractors and, therefore, they are not Class 1 claimants because they were not employees. Second, even assuming some physicians were employees, nothing they did by providing physician services to members did anything reasonably necessary for an effective and orderly administration of Class 2 claimants. Third, physician services for members – whether done by employee physicians or independent contractor physicians – do not qualify as claims under a policy for a “loss” incurred pursuant to MCL 500.8142(1)(b). Fourth, the proper claimants should be the members of The Wellness Plan who have a contractual relation with the plan – not the physicians who performed services at the request of plan members. At best, those physicians are general creditors and have a lesser priority than bodily injury claimants such as Jalyn McCoy.

In addition, Jalyn McCoy objects to the late service of the 2/28/05 scheduling order attached as Ex. 1 to the appearance of his lawyers, as it was required to be served no later than March 16, 2005, but was served on April 12, 2005.

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Dated: 4/19/2005

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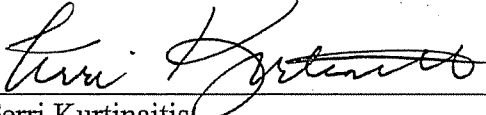
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PROOF OF SERVICE

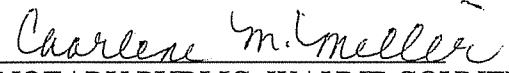
Terri Kurtinaitis states on the 19th day of April 2005 she did as follows: I am a resident of Michigan. I am over eighteen (18) years and not a party to the aforementioned action. I served a copy of the following upon Mark Zausmer, Esq. and Wilson Copeland, Esq., as well as Hon. William Collette, Ingham County Circuit Court,

3rd Floor, County Courthouse, Mason, MI 48854, at the Court address set forth herein and at the attorneys' office addresses listed above by U.S. Mail, first class postage prepaid.

(a) Brief in Support of Priority of Jalyn McCoy versus Physicians


Terri Kurtinaitis

Subscribed and sworn to before me
on the 19th day of April 2005.


NOTARY PUBLIC, WAYNE COUNTY
My commission expires: 11-7-07